USOA accounts is absurd. The Commission's rules require a carrier to use the Uniform System of Accounts ("USOA") to account for both regulated and nonregulated activities. To claim that nonregulated operations that are included in those accounts must be subject to the rules applicable to regulated operations because nonregulated operations are included in USOA accounts is circular reasoning and must be rejected.

Similarly, nonregulated affiliates should not be required to adopt the USOA but should maintain accounting according to Generally Accepted Accounting Principles ("GAAP"). The USOA is only appropriate for regulated entities.

F. Booking estimated costs of affiliate transactions for later true-up is unnecessary and burdensome.

The NPRM suggests that carriers book estimates of their affiliate transactions and then true-up these estimates on an annual basis.[27] This process is unnecessary because actual results from the transactions will be readily available. Booking estimated costs will not serve any purpose. In fact, if actuals are known, booking estimated costs is contrary to GAAP. Moreover, estimates are not as accurate as actual results. The true-up process would require unnecessary expenditure of limited resources and should therefore be rejected.

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27 NPRM at paras. 77-80.

G. The proposal to require carriers to calculate nonregulated affiliate transaction costs at FDC using rules applicable to regulated carriers should be modified.

The NPRM proposes to require carriers to calculate the FDC of nonregulated affiliate transactions using the Commission's rules on rate base and expense methodologies, and using an equivalent rate of return as required for carriers.[28] The Commission should modify the proposals that would require nonregulated affiliate costs to be treated the same as regulated carrier costs and permit some flexibility in applying regulated rules to nonregulated affiliate costs.

It is inappropriate to force the costs of nonregulated affiliates to conform to regulations that were developed for companies that were monopolies. Except for affiliates intended to primarily serve their regulated companies, nonregulated affiliates are competitive business enterprises. Affiliates intend to compete and earn profits. Business practices are designed to accomplish that goal. The marketplace, through competition, regulates nonregulated affiliates. Applying rules designed for regulated companies will force an artificial structure on nonregulated affiliates which can only result in tortured application of the rules. For example, the concept of "used and useful" as applied to a regulated entity has no application to a nonregulated affiliate. The Commission should

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[28] NPRM at para. 61.

presume that all of the affiliate's property is used or useful or it would not be held by the nonregulated affiliate.

Similarly, nonregulated affiliates follow GAAP, including the GAAP provisions regarding an allowance for funds used during construction (AFUDC). GAAP is appropriate for nonregulated affiliates. Rather than require carriers to recalculate AFUDC according to regulatory rules, the Commission should allow nonregulated affiliates to continue to follow GAAP in determining AFUDC and should treat any and all plant under construction as used and useful. Nonregulated affiliates for the most part are not as capital intensive as regulated telephone companies and generally would not invest in construction projects unless they were to be used and useful.

In calculating a "rate base" for a nonregulated affiliate from which an allowable return may be computed on affiliate transactions, the Commission may in fact adopt a "generic" rate base. However, the Commission should remember that nonregulated affiliates are dissimilar. Unlike regulated carriers which must use the Uniform System of Accounts and have similar business structures, nonregulated carriers may be structured differently, have different accounts and may have different types of expenses in those accounts. The only similarity that can be expected is that they all follow GAAP. While the Commission's desire to apply the Part 65 principles regarding inclusions, exclusions and deductions to a rate base for nonregulated affiliates is understandable, those principles must be applied in a flexible manner because of the differences in how nonregulated affiliates may record particular types of investments and expenses.

The Commission should also continue its current policy of allowing variations from the use of the "generic" rate base and nonregulated affiliate rate of return when it is in the best interest of the ratepayer.

> Our affiliate transaction rules were made to prevent cross-subsidization and allow any benefit to the ratepayer to be received. If a company wishes to choose a pricing method which benefits the ratepayer, though not in strict accordance with our rules, the company should be allowed to do so.[29]

As long as the rate base and rate of return used by the nonregulated affiliate result in a return lower than that which would have been calculated from the Commission's "generic" rate base and authorized interstate rate of return, an alternate method should be acceptable. As a check, a comparison between the alternate ratebase calculation and the Commission's approved method could be required to ensure that the alternate method produces a return that is lower than or equal to the Commission's method.

The Commission has historically used the authorized interstate rate of return to determine the return component of the nonregulated affiliate cost. Since the Commission deals with interstate costs, that rate seems reasonable. The Commission,

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29 Letter from Jose-Luis Rodriguez, Chief, Audits Branch, FCC, to S. Herauf, Director, Federal Regulatory Matters, Pacific Telesis Group (March 20, 1992).

however, should be flexible and allow other rates of return to be used when that is in the best interests of ratepayers. For example, Pacific Bell uses the lower of the authorized interstate or intrastate rate of return when calculating a nonregulated affiliate's return on an affiliate transaction. This kind of flexibility should be permitted to continue.

III. Conclusion

The increase in the regulation of affiliate transactions proposed by the NPRM is contrary to the Commission's policy which favors marketplace regulation in lieu of government intervention. Reducing regulation is appropriate with increased competition. Given the extent and rapid growth in interstate access competition, LECs should be relieved of regulatory burdens to enable them to truly compete with their nonregulated competitors. Instead, this NPRM would increase the burden of carriers' affiliate transaction safeguards, particularly by requiring the fair market valuation for services provided by or to a carrier. For the reasons provided above, the Commission should reject these regulations as not being in the public interest; they significantly increase carriers' regulatory burden without additional ratepayer benefit.

Respectfully submitted,

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